



U.S. Customs and
Border Protection

MEMORANDUM FOR: John V. Kelly
Acting Inspector General
Department of Homeland Security

FROM: Henry A. Moak, Jr.
Acting Senior Component Accountable Official
U.S. Customs and Border Protection

X 

2/14/2018

Signed by: HENRY A MOAK JR

SUBJECT: 90-Day Update: OIG-18-18, Management Alert – CBP’s Use of
Examination and Summons Authority Under 19 U.S.C. § 1509

This memorandum contains information regarding U.S Customs and Border Protection’s (CBP) progress in implementing the recommendations made in the Office of Inspector General (OIG) final management alert, OIG-18-18, “CBP’s Use of Examination and Summons Authority Under 19 U.S.C. § 1509.”

The management alert contained three recommendations, with which CBP concurred. Please find outlined below CBP’s update for each recommendation.

Recommendation 1: Update the Special Agent Internal Operating Procedures (IOP) immediately to reflect the guidance on the use of Section 1509 Summonses provided in the May 25, 2017, email referenced in this report from the Executive Director of CBP OPR’s Investigative Operations Division.

Original Response: Concur. CBP Office of Professional Responsibility (OPR) has initiated a three pronged approach for immediate corrective action. The first prong commenced in April 2017, when CBP OPR delivered verbal guidance to OPR agents at headquarters and field offices on the issuance of the Customs Summons. The guidance included the requirement to obtain concurrence from the CBJP Office of Chief Counsel (OCC) prior to issuance of any Customs Summons. The second prong for immediate corrective action was completed in May 2017, when CBP OPR provided additional written guidance to OPR agents related to the issuance of the Customs Summons. Lastly, the third prong for immediate corrective action was finalized in June 2017. CBP OPR released written guidance to OPR agents on the issuance of the DHS 3115, Customs Summons, and Immigration Enforcement Subpoena to Appear and/or Produce Records (Title 8 USC § 1225 (d)), requiring final approval from the Assistant Commissioner of OPR on all requests.

The guidance also includes a three level approval process. First, OPR Special Agents in Charge (SAC) will review all summons and subpoenas and supporting documentation to ensure

compliance with applicable authorities and policies, prior to submission to OCC. Next, the appropriate Associate or Assistant Chief Counsel (ACC) office will review the requests for legal sufficiency and provide a recommendation regarding issuance of the subpoena or summons. Lastly, the OPR SAC will ensure a copy of the summons or subpoena and ACC’s legal review and recommendation are forwarded to IOD Headquarters to review by the IOD Executive Director and approval by the CBP OPR Assistant Commissioner. In addition, CBP OPR is revising the Investigative Operations Division (IOD) Internal Operating Procedures (IOP) 2.0, and expects to issue the updated guidance no later than April 30, 2018. The IOP 2.0 will include the revised and updated guidance on the issuance of the DHS 3115.

Estimated Completion Date (ECD): April 30, 2018.

OIG Analysis: CBP concurred with our recommendation and provided copies of the written guidance already provided to CBP OPR personnel on the appropriate use of Section 1509 Summonses/ DHS 3115. However, this recommendation will remain open and resolved until CBP OPR issues a revised IOP reflecting the updated guidance.

February 2018 Update: The IOP is in the process of being updated. Once the IOP updates are drafted, the document will be reviewed by CBP OPR management, as well as OCC. CBP is on target to complete this recommendation by April 30, 2018.

Recommendation 2: Relevant CBP personnel receive training on the proper use of Section 1509 Summonses as soon as practicable.

Original Response: Concur. In July 2017, all OPR SACs were provided updated training from CBP OCC on the authority and issuance of the DHS 3115, pursuant to Title 19 U.S.C. § 1509, as it relates to CBP OPR. Additionally, once the IOP 2.0 is released, OPR anticipates conducting an IOP 2.0 Training to all of the OPR SAC Offices. The training will cover every chapter of the IOP 2.0, to include the updated guidance on the issuance of the DHS 3115 Summons.

ECD: May 30, 2018.

OIG Analysis: CBP concurred with our recommendation and provided a copy of the training materials used to train OPR SACs in July 2017 on the appropriate use of Section 1509 Summonses/ DHS 3115. The guidance provided in the training materials is consistent with the guidance provided in the May 25, 2017 email from the Executive Director of CBP OPR’s IOD. However, this recommendation will remain open and resolved until CBP OPR completes the training it intends to conduct at all OPR SAC Offices following issuance of the revised IOP.

February 2018 Update: Beginning in March 2018, training will be initiated at the CBP OPR Special Agent Training, and subsequent training will be included in all OPR Special Agent Training classes to address all new OPR criminal investigators. In addition, PowerPoint presentations will be provided to the OPR SAC offices by May 30, 2018. CBP is on target to complete this recommendation by May 30, 2018.

Recommendation 3: Recommend that CBP look at use of Section 1509 Summonses across the agency to determine how such summonses are being used, and whether such uses comport with the law and CBP’s updated policy.

Original Response: Concur. On May 5, 2017, CBP created a CBP-wide working group, spearheaded by CBP OCC, to update the CBP Directive on the Examination and Summons

Authority under Title 19 U.S.C. § 1509. The working group reviewed the existing CBP Directive and has revised it to reflect the current use of the summons authority by various offices within CBP. The CBP Directive will also include a training requirement for offices across the agency on proper use of Section 1509 summonses. The CBP Directive is in final draft and pending review and comment from all impacted CBP Offices.

ECD: May 30, 2018.

OIG Analysis: CBP concurred with our recommendation and provided a copy of the final draft version of the updated Directive. One sub-section of the draft Directive specifically addresses summonses issued to third parties pursuant to 19 U.S.C. § 1509, including social media outlets like Twitter. The sub-section specifies that if the requested records are not required to be kept under 19 U.S.C. § 1508, such summonses may be issued only if CBP has probable cause to believe the requested records pertain to merchandise the importation of which into the U.S. is prohibited. This instruction is consistent with the guidance provided in the May 25, 2017 email from the Executive Director of CBP OPR’s IOD. A separate section of the draft Directive also requires CBP Offices to provide training to employees on best practices associated with the issuance of the 1509 summons.

While the draft Directive addresses the concerns reflected in Recommendations 1 and 2 of this alert, it does not address Recommendation 3. Recommendation 3 calls on CBP to review how its personnel have been using Section 1509 Summonses to determine whether such summonses are consistently being used in compliance with the law and CBP’s updated policy. Accordingly, this recommendation will remain unresolved and open until CBP provides evidence that it has conducted this retrospective review.

February 2018 Update: CBP is conducting an agency-wide survey to determine how Section 1509 summonses have been used, beginning from fiscal year 2012. CBP is in the process of collecting information from all offices that have the authority to issue Section 1509 summonses. The information collected will be analyzed to determine whether the use of the summons authority comports with applicable law and CBP policy. CBP is on target to complete this recommendation by May 30, 2018.

Should you have any questions or if you would like additional information, please contact CBP Audit Liaison (b) (6), (b) (7)(C)

From: (b) (6), (b) (7)(C)
To:
Subject: FW: 1509 summonses
Date: Thursday, May 25, 2017 2:24:01 PM
Importance: High

From: (b) (6), (b) (7)(C)
Sent: Thursday, May 25, 2017 9:44:11 AM
To: (b) (6), (b) (7)(C)
(b) (6), (b) (7)(C)
Cc: (b) (6), (b) (7)(C)
Subject: 1509 summonses

SACs

In the upcoming revised IOP, there will be additional information included to assist you and your agents navigate Title 8 and 19 summonses. In addition, the Commissioner has asked we change the review process. Until those details are finalized, I wanted to give you supplemental guidance regarding the issuance of summonses under 19 U.S.C § 1509 in criminal and administrative investigations involving employee misconduct. OPR IOD may utilize a 1509 summons authority in investigations and inquiries involving employee misconduct, but only where such misconduct is connected to the importation, certain exportations, or transportation or storage under bond, of merchandise. In such investigations, OPR may use a 1509 summons to obtain entry records or other records required to be kept under 19 U.S.C. § 1508. In instances where records are sought from third parties, such as telecommunications providers, social media outlets, and banks, who are not otherwise obligated to keep records pursuant to 1508, the issuance of a 1509 summons requires probable cause to *believe* that the *records relate* to an importation of merchandise that is prohibited. Prior to issuance of a section 1509 summons to a third party, OPR agents are required to consult with the appropriate Associate/Assistant Chief Counsel office.

We will discuss further tomorrow during the Huddle.

(b) (6), (b) (7)(C)

CBP OPR Summons Issuance

CASE #	DATE	OFFICE	ISSUED TO	OFFENSE
(b) (7)(E)	1/22/2015	Detroit	(b) (7)(E)	USBP received telephonic threats
	4/10/2015	El Paso		Drug Smuggling
	6/3/2015	El Paso		Mismanagement
	6/3/2015	El Paso		CBPOs allegedly provide a subjects crossing information to the subjects girlfriend
	7/8/2015	El Paso		Threats against BPA
	9/28/2015	El Paso		Theft of service weapon/Lack of Condor
	10/14/2015	Del Rio		Alleged disreputable association between BPA and criminal organization
	10/27/2015	Bellingham		Stolen Property
	11/6/2015	El Paso		Theft of service weapon/Lack of Condor
	11/9/2015	El Paso		Theft of service weapon/Lack of Condor
	11/9/2015	El Paso		Theft of service weapon/Lack of Condor
	11/9/2015	El Paso		Theft of service weapon/Lack of Condor
	11/18/2015	Bellingham		Corruption/Bribery
	11/18/2015	Bellingham		Corruption/Bribery
	11/18/2015	Bellingham		Corruption/Bribery
	11/18/2015	Bellingham		Corruption/Bribery
	11/19/2015	Bellingham		Corruption/Bribery
	11/30/2015	Bellingham		Corruption/Bribery
	11/30/2015	Bellingham		Corruption/Bribery
	11/30/2015	Bellingham		Corruption/Bribery
	12/3/2015	Bellingham		Corruption/Bribery
	12/3/2015	Bellingham		Corruption/Bribery
	12/8/2015	Bellingham		Corruption/Bribery
	1/5/2016	Miami		Threats
	1/7/2016	Miami		CBPO approached for bribe
	1/7/2016	Miami		CBPO approached for bribe
	1/7/2016	Miami		CBPO approached for bribe
	1/7/2016	Miami		CBPO approached for bribe
	1/7/2016	Miami		CBPO approached for bribe

CBP OPR Summons Issuance

CASE #	DATE	OFFICE	ISSUED TO	OFFENSE
(b) (7)(E)	1/7/2016	Miami	(b) (7)(E)	CBPO approached for bribe
	1/7/2016	Bellingham		Corruption/Bribery
	1/8/2016	Miami		CBPO approached for bribe
	1/8/2016	Miami		CBPO approached for bribe
	1/8/2016	Miami		CBPO approached for bribe
	1/11/2016	Houston		invalid or access is denied
	1/11/2016	Miami		CBPO approached for bribe
	1/11/2016	Miami		CBPO approached for bribe
	1/11/2016	Miami		CBPO approached for bribe
	1/11/2016	Miami		CBPO approached for bribe
	1/11/2016	Miami		CBPO approached for bribe
	1/11/2016	Miami		CBPO approached for bribe
	1/15/2016	Houston		BPA found guilty of Engaging in Organized Criminal Activity
	1/15/2016	Del Rio		Alleged disreputable association between BPA and criminal organization
	1/15/2016	Bellingham		Corruption/Bribery
	1/15/2016	Bellingham		Corruption/Bribery
	1/15/2016	Bellingham		Corruption/Bribery
	1/19/2016	Miami		CBPO approached for bribe
	1/20/2016	Miami		CBPO approached for bribe
	1/20/2016	Del Rio		Alien Smuggling
	1/22/2016	Miami		CBPO approached for bribe
	1/25/2016	Houston		Threat against BPA
	1/25/2016	Houston		Threat against BPA
	1/25/2016	Miami		CBPO approached for bribe
	1/25/2016	Miami		CBPO approached for bribe

CBP OPR Summons Issuance

CASE #	DATE	OFFICE	ISSUED TO	OFFENSE
(b) (7)(E)	1/25/2016	Del Rio	(b) (7)(E)	Misconduct -Unauthorized use of Gov veh
	1/26/2016	Los Angeles		SCBPO alleged improper Immigration processing of passengers
	1/26/2016	Los Angeles		SCBPO alleged improper Immigration processing of passengers
	1/26/2016	Los Angeles		SCBPO alleged improper Immigration processing of passengers
	1/26/2016	Los Angeles		SCBPO alleged improper Immigration processing of passengers
	1/26/2016	Los Angeles		SCBPO alleged improper Immigration processing of passengers
	1/26/2016	Los Angeles		SCBPO alleged improper Immigration processing of passengers
	1/26/2016	Los Angeles		SCBPO alleged improper Immigration processing of passengers
	1/26/2016	Los Angeles		SCBPO alleged improper Immigration processing of passengers
	1/26/2016	Los Angeles		SCBPO alleged improper Immigration processing of passengers
	1/26/2016	Los Angeles		SCBPO alleged improper Immigration processing of passengers
	1/27/2016	Houston		CBPO queried a subject in (b) (7)(E) and may have told the subject he is under investigation
	1/29/2016	DC		CBPO made unofficial (b) (7)(E) query on high profile subject of HSI investigation
	1/29/2016	DC		CBPO made unofficial (b) (7)(E) query on high profile subject of HSI investigation
	2/8/2016	Miami		CBPO approached for bribe
	2/8/2016	Miami		CBPO approached for bribe
	2/8/2016	Miami		CBPO approached for bribe
	2/8/2016	Miami		CBPO approached for bribe
	2/8/2016	Houston		Report that a vehicle with aftermarket compartment was operated by CBPO
	2/8/2016	Del Rio		Drug Smuggling
	2/18/2016	Del Rio		Drug Smuggling
	2/22/2016	Houston		BPA found guilty of Engaging in Organized Criminal Activity

CBP OPR Summons Issuance

CASE #	DATE	OFFICE	ISSUED TO	OFFENSE
(b) (7)(E)	2/28/2016	Del Rio	(b) (7)(E)	Unidentified person appears to be impersonating a BPA on Facebook
	3/1/2016	Houston		Law Enforcement Communications Assistant posed as a BPA
	3/14/2016	Miami		Twitter account reportedly posting documents that appear to be CBP emails
	3/16/2016	Yuma		CBPO is alleged to be associated with known drug smuggler
	3/16/2016	Yuma		CBPO is alleged to be associated with known drug smuggler
	3/16/2016	Houston		CBPO allegedly living beyond his financial means
	3/16/2016	Houston		CBPO allegedly living beyond his financial means
	4/4/2016	San Diego		Corruption/Bribery
	4/4/2016	San Diego		Corruption/Bribery
	4/6/2016	Houston		Alien Smuggling
	4/6/2016	Del Rio		Unidentified person appears to be impersonating a BPA on Facebook
	4/12/2016	Del Rio		BPA allegedly referenced in an FBI investigation of a Mexican DTO
	4/19/2016	El Paso		Drug Smuggling
	4/19/2016	El Paso		Drug Smuggling
	4/19/2016	El Paso		Drug Smuggling
	4/19/2016	Houston		CBPO allegedly living beyond his financial means
	4/25/2016	Los Angeles		SCBPO alleged improper Immigration processing of passengers
	4/25/2016	Los Angeles		SCBPO alleged improper Immigration processing of passengers
	5/2/2016	Del Rio		BPA allegedly referenced in an FBI investigation of a Mexican DTO

CBP OPR Summons Issuance

CASE #	DATE	OFFICE	ISSUED TO	OFFENSE
(b) (7)(E)	5/10/2016	Del Rio	(b) (7)(E)	Unidentified person appears to be impersonating a BPA on Facebook
	5/10/2016	Del Rio		Unidentified person appears to be impersonating a BPA on Facebook
	5/10/2016	Del Rio		Unidentified person appears to be impersonating a BPA on Facebook
	5/10/2016	Del Rio		Unidentified person appears to be impersonating a BPA on Facebook
	5/10/2016	Del Rio		Unidentified person appears to be impersonating a BPA on Facebook
	5/10/2016	Del Rio		Unidentified person appears to be impersonating a BPA on Facebook
	5/10/2016	Del Rio		Unidentified person appears to be impersonating a BPA on Facebook
	5/10/2016	Del Rio		Unidentified person appears to be impersonating a BPA on Facebook
	5/10/2016	Del Rio		Unidentified person appears to be impersonating a BPA on Facebook
	5/10/2016	Del Rio		Unidentified person appears to be impersonating a BPA on Facebook
	5/10/2016	Del Rio		Unidentified person appears to be impersonating a BPA on Facebook
	5/12/2016	Del Rio		Misconduct - CBPO has a suspended driver's license
	5/17/2016	Houston		Alien Smuggling
	5/18/2016	Houston		Alien Smuggling
	5/19/2016	Del Rio		Unidentified person appears to be impersonating a BPA on Facebook
	5/24/2016	El Paso		Drug Smuggling
	5/24/2016	El Paso		Drug Smuggling
	5/24/2016	El Paso		Drug Smuggling
	5/25/2016	Del Rio		SBPA reported receiving a call from a subject who claimed to be a cartel leader and offered him a bribe
	6/1/2016	Houston		Alien Smuggling
	6/1/2016	El Paso		Drug Smuggling

CBP OPR Summons Issuance

CASE #	DATE	OFFICE	ISSUED TO	OFFENSE
(b) (7)(E)	6/1/2016	El Paso	(b) (7)(E)	Drug Smuggling
	6/1/2016	El Paso		Drug Smuggling
	6/20/2016	San Diego		BP, Government issued night vision goggles for sale on Craigslist
	6/21/2016	San Diego		Corruption/Bribery
	6/30/2016	San Diego		Alien Smoggling
	6/30/2016	San Diego		Alien Smuggling
	7/5/2016	San Diego		CBPO reported his stepson was arrested on concealed weapon and vehicle theft charges
	7/6/2016	Del Rio		Unidentified person appears to be impersonating a BPA on Facebook
	7/6/2016	Del Rio		Unidentified person appears to be impersonating a BPA on Facebook
	7/6/2016	Del Rio		Unidentified person appears to be impersonating a BPA on Facebook
	7/6/2016	Del Rio		Unidentified person appears to be impersonating a BPA on Facebook
	7/6/2016	Del Rio		Unidentified person appears to be impersonating a BPA on Facebook
	7/6/2016	Del Rio		Unidentified person appears to be impersonating a BPA on Facebook
	7/6/2016	Del Rio		Unidentified person appears to be impersonating a BPA on Facebook
	7/6/2016	Del Rio		Unidentified person appears to be impersonating a BPA on Facebook
	7/6/2016	Del Rio		Unidentified person appears to be impersonating a BPA on Facebook
	7/6/2016	Del Rio		Harrassment
	7/7/2016	Houston		Alien Smuggling
	7/7/2016	San Diego		CBPO's phone number found in the phone of a subject arrested for narcotics smuggling
	7/21/2016	Houston		Anonymous caller alleged a BPA is providing his illegal alien girlfriend a place to live
	7/26/2016	Houston		Drug Smuggling
	7/27/2016	San Diego		CBPO's phone number found in the phone of a subject arrested for narcotics smuggling
	8/2/2016	Houston		BPA, disreputable association, profited from gambling on horse races
	8/2/2016	Houston		Disclosure of case information

CBP OPR Summons Issuance

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CBP OPR Summons Issuance

CASE #	DATE	OFFICE	ISSUED TO	OFFENSE
(b) (7)(E)	10/21/2016	Houston	(b) (7)(E)	BPA, alleged public corruption
	10/27/2016	Houston		BPA, alleged public corruption
	10/31/2016	Yuma		CBPO is alleged to be associated with known drug smuggler
	10/31/2016	Yuma		CBPO is alleged to be associated with known drug smuggler
	11/9/2016	Los Angeles		Misconduct - CBPO allegedly requested sick leave under false pretenses
	11/14/2016	El Paso		Drug Smuggling
	11/14/2016	El Paso		Drug Smuggling
	11/14/2016	El Paso		Drug Smuggling
	11/15/2016	Houston		CBPO queried a subject in (b) (7)(E) and may have told the subject he is under investigation
	11/16/2016	Houston		Disreputable Association by CBPO
	11/16/2016	Houston		Disreputable Association by CBPO
	11/16/2016	Houston		Disreputable Association by CBPO
	12/5/2016	Del Rio		Alien Smuggling
	12/16/2016	Los Angeles		Misconduct - CBPO allegedly requested sick leave under false pretenses
	1/6/2017	Miami		Missing or stolen property
	1/11/2017	Miami		Missing or stolen property
	1/19/2017	Miami		Missing or stolen property
	1/19/2017	Miami		Missing or stolen property
	1/20/2017	Detroit		Corruption/Bribery
	1/25/2017	Los Angeles		Misconduct - CBPO allegedly requested sick leave under false pretenses
	1/25/2017	Los Angeles		Misconduct -CBPO allegedly requested sick leave under false pretenses
	1/31/2017	El Paso		Unusual circumstances related to two BPAs
	2/7/2017	Miami		Missing or stolen property

CBP OPR Summons Issuance

CASE #	DATE	OFFICE	ISSUED TO	OFFENSE
(b) (7)(E)	2/14/2017	Miami	(b) (7)(E)	Missing or stolen property CBPO is alleged to be associated with known drug smuggler
	2/15/2017	Yuma		
	2/17/2017	Miami		Missing or stolen property
	2/27/2017	Miami		Missing or stolen property
	2/27/2017	Miami		Missing or stolen property
	3/1/2017	Yuma		CBPO reported the sister of his estranged wife was detained by Mexican customs officials
	3/14/2017	Detroit		Corruption/Bribery
	3/17/2017	El Paso		Drug Smuggling
	3/24/2017	El Paso		Drug Smuggling
	3/24/2017	El Paso		Drug Smuggling
	3/24/2017	El Paso		Drug Smuggling
	3/24/2017	El Paso		Drug Smuggling after getting her number from a Customs form
	3/27/2017	Miami		
	3/31/2017	El Paso		Drug Smuggling
	3/31/2017	El Paso		Drug Smuggling
	3/31/2017	El Paso		Drug Smuggling
	3/31/2017	El Paso		Drug Smuggling
	3/31/2017	El Paso		Drug Smuggling
	3/31/2017	El Paso		Drug Smuggling
	3/31/2017	El Paso		Drug Smuggling
	3/31/2017	El Paso		Drug Smuggling CBPO is alleged to be associated with known drug smuggler
	4/17/2017	Yuma		CBPO is alleged to be associated with known drug smuggler
	4/17/2017	Yuma		CBPO is alleged to be associated with known drug smuggler
	4/20/2017	Yuma		CBPO reported the sister of his estranged wife was detained by Mexican customs officials CBPO is alleged to be associated with known drug smuggler
	4/24/2017	Yuma		
	4/24/2017	Yuma		CBPO is alleged to be associated with known drug smuggler
	4/24/2017	Yuma		CBPO is alleged to be associated with known drug smuggler
	4/24/2017	Yuma		CBPO is alleged to be associated with known drug smuggler

CBP OPR Summons Issuance

CASE #	DATE	OFFICE	ISSUED TO	OFFENSE
(b) (7)(E)	4/24/2017	Yuma	(b) (7)(E)	CBPO is alleged to be associated with known drug smuggler
	4/24/2017	Yuma		CBPO is alleged to be associated with known drug smuggler
	4/24/2017	Yuma		BPA's wife claimed that he uses cocaine
	5/1/2017	Yuma		CBPO is alleged to be associated with known drug smuggler
	5/1/2017	Yuma		CBPO is alleged to be associated with known drug smuggler
	5/1/2017	San Diego		Threats